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Nominal Expatriation for Operational Purposes

1. The general question presented is whether an overt act of expatriation done for operational expediency by an employee of the U. S. Government works a forfeiture of citizenship in the face of the individual's mental reservation to remain a U. S. citizen.

2. "Expatriation" has been defined as leaving one's country and renouncing allegiance to it with the purpose of making a home and becoming a citizen in another country. The necessity of leaving the country has been somewhat repudiated by the technical provisions of our statutory law but the renunciation -- either in word or act -- is important. And even more important is the mental attitude behind the renunciation -- for it must be voluntary (11 C.J. 784). Allegiance itself has been defined as fealty or fidelity and obedience which the individual owes to the Government in return for the protection he receives from that Government (2 C.J. 1149-1150). The act of renunciation itself is conditioned on the personal capacity of the person taking it, for he must be of full age and under no disability, with a fixed determination and unequivocal resolve to throw off his former fidelity (11 C.J. 784). Although expatriation was once impossible under English law, it is now recognized as a natural and inherent right for which our statutes specifically provide (R.S. § 1999, Title 8, U.S.C.A. § 800). It applies to abrogation of U. S. citizenship as well as renunciation of foreign allegiance in favor of the U. S. (McKenzie v. Ives, 23 U. S. 299, 36 S.Ct. 106, et al).

3. The Nationality Act of 1940 is the pertinent U. S. statute on expatriation. It is exclusive in its provisions and specifies the only conditions and acts under which U. S. citizenship can be lost (Title 8, U.S.C.A. § 803). Generally, there are two restrictions on the statutory expatriations: (1) the person must be 18 years of age, and (2) except for desertion or treason, the act is not effective if performed within the U. S. or its possessions unless it is followed by residence abroad (Title 8, U.S.C.A., § 803). The basic provisions for expatriation by a U. S. national, whether he is a citizen by birth or naturalization, should be examined in detail. They are found in Title 8, U.S.C.A. under the following subsections and provide for expatriation by:

a. Naturalization in a foreign state -- his own application, or through the naturalization of a parent who is his legal custodian. In the latter case, there will be no forfeiture until the child reaches the age of 23 without acquiring permanent residence in the U. S.;

b. Formal declaration of allegiance to a foreign state;

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expatriation. Aside from the involuntary forfeiture of citizenship which follows a conviction for treason or desertion, the actions stipulated in the statute must all be taken on the individual's own initiative without any duress, psychic or physical. It is recognized that there is some resistance to this position. In the recent case of Savoyan v. U.S., 171 Fed. (2nd) 155 (1948), the Seventh Circuit Court of Appeals held that citizenship could be lost regardless of intent. An American woman voluntarily applied for and obtained Italian citizenship in the U.S. in order to marry a member of the Italian Foreign Service. She misunderstood the legal effect of her action and apparently believed that her U.S. citizenship would not be forfeited. The court held that it was. Even if this position becomes prevalent among the jurists, it would seem that this case could be distinguished from one in which a Government employee performs a statutory act of expatriation in order to carry out his duties. In the one hand, it is the selfish overt act of an individual for his own convenience and on the other, action taken on behalf of the U.S. in the public welfare. If an employee of the Federal Government performs the superficial mechanics of expatriation at the bequest of the same government which specifies the consequences of such acts, it is submitted that the administrative officers of the government are free to recognize the absence of individual initiative in taking such acts and to withhold the consequential penalty of expatriation. The spontaneous action of the selfish volunteer is totally absent in the cooperative action of the Government employee who accepts an order for operational effectiveness. Whenever the various acts of expatriation can be done with convincing but not technical fidelity, final formal compliance with the statute should be, of course, avoided. But where the terms of the statute are so simple and express that compliance must be complete to be operationally effective. Then the element of consent -- infused with the factor of public interest -- should be essential.

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